

### III. REMARKS

Claims 1-3, 12, 13, 19, 23, 26, and 27 are amended. Claims 9,10, 16, 21, and 25 have been cancelled without prejudice.

Applicant has amended the claims to more clearly describe the elements of Applicants' system that distinguish the claimed subject matter over the prior art. In addition the amendments are directed to updating language and improving consistency. No new subject matter is claimed. The amendments to the claims are not intended to be limiting, are not made for reasons related to patentability, and should not be interpreted to raise issues of estoppel.

These amendments are submitted after final rejection in order to place the claims in condition for allowance or in the alternative to place the claims in better condition for appeal. Applicant submits that such amendments are properly entered under 37USC1.116. The Examiner is respectfully requested to enter these amendments in order to advance the prosecution of this application

#### **The Office Action and Responsive Remarks**

Applicant has considered the Examiner's comments set forth in the Office Action mailed October 22, 2009 and responds in detail below. Reconsideration of the application is respectfully requested in view of the amendments and the following remarks.

Claims 1-5, 8-21, and 23-27 stand rejected is rejected under 35USC103(a) based on the combined teaching of the cited reference Wang et al. (US 6,175,922, "Wang") in view of Wiik et al. (US 5,260,551, "Wiik"). This rejection is traversed on the following grounds:

The combined teaching of Wang and wiik does not render claims 1-5, 8-21, and 23-27 obvious because it fails to teach or otherwise suggest each and every limitation of the claims. In a prima facie case for obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. In addition there should be presented a rational basis for making the claimed combination. There should also be presented a motivation and a reasonable expectation of success of the combination, based on the prior art, without reference to the disclosure of this application. Although the case of *KSR International Co. v. Teleflex Inc.* (KSR), 550 U.S., 82 USPQ2d 1385 (2007), clarified the framework for the rejection of claims based on obviousness under 35 USC §103(a), the case raises the further operative question,

namely: “whether the improvement is more than the predictable use of prior art elements according to their established functions.” (82 USPQ2d at 1396. (from MPEP 2141). There must also be some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. (MPEP 2141, III(G)). In this case, it is submitted that the “predictable use” of the prior art elements of the combined teaching does not lead to Applicant’s claimed subject matter.

The element of Wang that appears analogous to the access device of Applicant’s claims is requesting device 202, as shown in figure 2, of Wang. As described in column 3, lines 5-20 of Wang, requesting device 202 is in direct communication with the server 104 and receives from the server an approved transaction request that is transmitted to portable electronic authorization device (PEAD) 200, providing a PEAD is found to be available. The approved transaction may be accepted by the user through the operation of a switch on the PEAD, see for example, column 5, lines 14-22. By operation of the switch an encrypted user identification is sent to requesting device 202. Although Wang suggests many alternative embodiments, they all operate by authorization generated at the PEAD and with the requesting device requiring data from the server. Wang states that this operation of the elements of their system is essential in order to avoid the need to enter identification data in a non-encrypted state (see column 2, lines 30-44.

As described in claim 1 of the application, Applicant’s access device (not the mobile device) performs the authorization step, based on information provided by Applicant’s mobile communication device. Such information comprises a key including an identifier of the service provider and data relating to validity and is obtained by the user through a communication link, established through a first transceiver, with a server of the service provider. Access to the desired service is provided by the access device, when the access device determines that a key, received from a second transceiver of the mobile communication device, is valid. Although several alternate embodiments are presented by Applicant, the elements of the claimed process and apparatus operate in this manner.

The elements of Wang, therefore, operate in a different manner than the elements of Applicant. Wang teaches away from using the “requesting device” unsupported by a service provider’s server. The deficiencies of Wang are not remedied by Wiik. Wiik fails to describe a system that operates in a wireless manner. As such it does not teach a person skilled in the art anything

regarding the wireless system of Wang. Wiik represents an obsolete technology that would not be a resource regarding the more advanced system of Wang. The combined teaching therefore, fails to support the rejection of the claims based on obviousness.

The examiner has failed to present a combination of teachings that teach or suggest the claimed subject matter as a whole, nor has a reasonable motivation for modifying the teachings been proposed. It would not be obvious to a person of ordinary skill in the art to modify Wang in view of Wiik to obtain the claimed subject matter, as there is no motivation to make the modification and in fact it is against teaching of Wang. Applicant submits that there is also no motivation to combine the wireless system of Wang with the hard wired system of Wiik. Wang teaches away from the technology of Wiik.

Independent claims 23, 26, and 27 contain equivalent language to that relied on above with respect to claim 1, therefore, the above grounds apply with similar force to all of the independent claims. These grounds also apply equally to the rejected dependent claims, which, by dependency, have the limitations described in the independent claims.

For all of the reasons stated above, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

/jvg44695/  
Joseph V. Gamberdell, Jr.  
Reg. No. 44,695

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Perman & Green, LLP  
99Hawley Lane  
Stratford, CT 06614  
(203) 259-1800  
Customer No.: 2512